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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/917,494	07/26/2001	Samuel L. Forusz	70452P002	9795

8791 7590 02/03/2003

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EXAMINER

PRATT, HELEN F

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 02/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/917,494

Applicant(s)

FORUSZ ET AL.

Examiner

Helen F. Pratt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 December 2002.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fripiat et al. or Harada et al. or Stillman in view of Green (EP 0756 828).

The claims are rejected for the reasons of record cited in the last office action and for these further reasons. Green discloses as to claim 1, a soluble fiber, inulin and a second soluble fiber in amounts from 8-40% as in a dry mix (col. 3, lines 12-30). The composition of the reference can be mixed with water in amounts of 2 grams, which surely has a viscosity of less than 1.4 cp or less. Nothing is seen that this is not the case (col. 4, lines 36-41 of Green). Therefore, it would have been obvious to make a composition with within the claimed viscosity.

Claims 10 to 12 further require particular amounts of ingredients and vitamin C. However, nothing has shown that these amounts are not shown by the references or slight variations of them. Harada et al. does show an amount of 5% polyfructan in a beverage formulation (Table 25, col. 20). The reference discloses that it is known to use other soluble fibers such as pectin, carrageenan, etc. with polyfructan that the desired degree of gelation depends on the desired degree of gelation (col. 4, lines 20-30). Vitamin C is a common vitamin additive, which is known to be added as in TANG

(trademark ) abstract. Therefore, it would have been obvious to vary the amounts of ingredients to produce a particular degree of gelation or viscosity and to add vitamin C to the composition.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over the above combination of references as applied to claims 1-7, 10-12 above and further in view of Green et al.

The claims are rejected for the reasons of record cited in the last office action.

#### ARGUMENTS

Applicant's arguments filed 12-27-02 have been fully considered but they are not persuasive. Applicants argue that Christine may or may not disclose an amount of 5% arabinoxanes and that no translation has been provided for it. However, Christine (2778849) was provided by Applicant's whose duty is to provide a translation. At any rate, an oral translation was provided by a PTO translator, and applicant s are seen to be correct. However, even with the three primary references, nothing has been shown that the amounts of fibers in the products do not contain the claimed viscosity. The PTO does not have the ability to make the products and determine their viscosity. As the main question is to amounts and viscosity, it is seen that it would have been within the skill of the ordinary worker to vary the amounts to achieve a particular viscosity because it is known that each fiber will produce a certain amount of viscosity.

Applicants request a proper citation to Green EP 0756 828 A1. Green '828 is one of applicants' references cited in their IDS. The motivation to combine is that it is known to use oligosaccharides such as inulin and other polysaccharides in a dry

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mixture. Therefore, it would have been obvious to make a dry mixture of the claimed composition, which also contains such ingredients.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 703-308-1978. The examiner can normally be reached on Monday, Wednesday and Friday from 9:30 to 6:00 and Tues and Thurs. from 4:30 to 10 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on (703) 3959. The fax phone number for the organization where this application or proceeding is assigned is 703-308-7718.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1193.

Hp 1-31-03

  
HELEN PRATT  
PRIMARY EXAMINER